IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTY FIRST DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE K.C. BHANU

WRIT PETITION NO : 23308 of 2004

Between:

Smt.G.Suseela W/o.Satyam
at Balapanur, R/o.Balapanur, Kurnool District

..... PETITIONER

AND

Member Secretary, Gurukulam Telugu Samkshema Bhavan, Masab Tank, Hyderabad.

1. The Project Officer, I.T.D.A (PTG-CHENCHU) Srisailam, Kurnool District.
2. Principal, A.P.Tribal Welfare Residential School, Nandyal Kurnool District.
3. Smt.G.Laxminarayanamma W/o. and age not known, working as Lab.Asst.a.P.T.W.R. School (B), Srisailam, Kurnool District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, or order or direction more particularly in the nature of writ of Mandamus to declare the action of the 1st and 2nd respondents in ignoring the case of the petitioner for promotion as Record Assistant, though the petitioner is the senior among the Class-IV employees working in Kurnool District by promoting the Junior to the petitioner is illegal and violative of Articles 14 and 16 of Constitution of India by setting aside the promotion order of the 4th respondent as Lab Assistant Vide Rc.No.A1/3016/04 dated 17.11.2004 of the 2nd respondent and in consequence there of to direct the 2nd respondent to promote the petitioner as Record Assistant with consequential benefits.

Counsel for the Petitioner: MR.V.V.NARASIMHA RAO

Counsel for the Respondent Nos 1 to 3: MR.G.CHANDRAIAH

Counsel for the Respondent No.4: None appeared

The Court made the following :

THE HON'BLE SRI JUSTICE K.C.BHANU

WRIT PETITION NO.23308 OF 2004

ORDER:

Seeking to declare the action of the 1st and 2nd respondents in ignoring the case of the petitioner for promotion as Record Assistant, is illegal and arbitrary, the present writ petition has been filed.

Learned counsel for the petitioner contended that as per the seniority list, the petitioner is the senior most person having entered into service on 17-4-1985. But, on the premise that her services were regularized with effect from 20-08-1993, she was not given any promotion. According to the learned counsel for the petitioner, two more vacancies are available for promotion in the feeder cadre of Class IV employees. Hence, the writ petition.

The factual matrix is not in dispute. The respondents filed counter-affidavit stating that they filled up the posts of Lab Record Assistants by eligible candidates based on the seniority, as per the records, taking into consideration the date of regularization of service. Even in the counter affidavit, the date of entry of the petitioner into service is not disputed. If that is taken into consideration, she is the senior most person in Class IV employees.

The learned counsel for the petitioner placed reliance on the decision in *Union of India V.Susekhar Guin,* wherein it is held that "counting continuous length of service for fixation of seniority is a well-accepted rule when the service rule does not prescribe a mode of fixing *inter se* seniority". From the above decision, it is evident that the continuous length of service rendered by the employee has to be taken into consideration for the purpose of determining the seniority, but not the date of regularization of service. If the rules governing the service conditions of the 1st respondent-society require the date of regularization as the criteria, then it would be different matter. In the counter affidavit, it is not stated that the date of regularization is to be rejected for the purpose of determination of seniority. So also, no Rule or regularization of the proceedings are brought to notice of this court that the date of regularization

has to be taken into consideration for the purpose of fixing the seniority. In the absence of all these aspects, the contention of the learned counsel for the petitioner is that in view of the continuous service rendered by the writ petitioner, her date of entry into service has to be taken into consideration. If that being the case, the petitioner is the senior most person among Class-IV employees category. Hence, she is eligible for promotion as Record Assistant.

Learned counsel for the petitioner fairly submitted that the petitioner is not challenging the promotion of the 4th respondent, in pursuance of the proceedings Rc.No.A1/3016/2004 dated 17-11-2004, and it is not necessary to decide that issue.

Therefore, the writ petition is disposed of, directing the respondents to give promotion to the petitioner in the existing Record Assistant vacancy or in the future vacancy, if such vacancy is not available as on today.

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31-3-2005

Note:

Furnish CC by three days.

(B/o) rkk

Copy to:

1. The Member-Secretasry, Gurukulam,
   Telugu Samkshema Bhavan, Masab Tank,
   Hyderabad-500 028.
2. The Project Officer, I.T.D.A. (PTG-CHENCHU)
   SRISAILAM, Kurnool District.
3. The Principal, A.P. Tribal Welfare Residential School,
   Nandyal, Kurnool District.

4. Two C.D. Copies.